

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
P.C. 6/12/02 Item

File Number
CP 01-01-008

Application Type
Conditional Use Permit

Council District
4

Planning Area
Alum Rock

Assessor's Parcel Number(s)
254-13-090

PROJECT DESCRIPTION

Completed by: Jenny Nusbaum

Location: South side of Berryessa Road approximately 400 feet northerly of Timothy Drive (11740 Berryessa Road)

Gross Acreage: 7.17

Net Acreage: 7.17

Net Density: n/a

Existing Zoning: HI-Heavy Industrial

Existing Use: Vacant with an existing mobile building

Proposed Zoning: n/a

Proposed Use: Concrete/asphalt crushing and recycling facility

GENERAL PLAN

Completed by: Jenny Nusbaum

Land Use/Transportation Diagram Designation
Heavy Industrial/Portion of Riparian Corridor is Public Park & Open Space

Project Conformance:
☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: Jenny Nusbaum

North: Flea Market

A (PD) Planned Development

East: Industrial & Coyote Creek

HI-Heavy Industrial & A (PD) Planned Development

South: Industrial

HI-Heavy Industrial

West: Industrial

HI-Heavy Industrial

ENVIRONMENTAL STATUS

Completed by: Jenny Nusbaum

☐ Environmental Impact Report found complete
☒ Negative Declaration circulated on May 14, 2002

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: Jenny Nusbaum

Annexation Title: Orchard No. 44

Date: 6/20/1967

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☒ Approval
☐ Approval with Conditions

Date:

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/OWNER/DEVELOPER

Roy Ferrari
SRDC, Incorporated
1265 Montecito Avenue, Suite #200
Mountain View, CA 94043-4506

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: Jenny Nusbaum

Department of Public Works

Please see attached memorandum.

Other Departments and Agencies

Please see attached memoranda from the Fire Department and the Santa Clara Valley Water District.

GENERAL CORRESPONDENCE

Please see attached correspondence from Dan Reda, Gary Schoennauer representing the Flea Market, Jennifer Peritz representing the Santa Clara Valley Audubon Society, and Keith Anderson representing Streams for Tomorrow.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant, SRDC Corporation, is requesting a Conditional Use Permit to allow a concrete/asphalt crushing and recycling facility on the subject site. The permit application is for a two-year non-renewable time period. The applicant agreed to this time period in exchange for reduced improvements to the site at this time. The Zoning Ordinance requires a Conditional Use Permit for the following proposed uses: (1) any otherwise unspecified industrial use (2) any use that may result in a noise level exceeding 60 dBA as measured at the property line of commercially-zoned or occupied-property, or otherwise exceed 70 dBA at the property line of an industrially-zoned property.

Project Site Context

The subject property is a 7.17 gross-acre parcel located on the south side of Berryessa Road approximately 400 feet northerly of Timothy Drive (11740 Berryessa Road) in the HI-Heavy Industrial Zoning District. Currently, the subject site is vacant. An unoccupied mobile building currently exists on the subject site. The subject site is located southerly of an approximately 50-foot wide strip of land owned by the Union Pacific Railroad that fronts on Berryessa Road. The strip contains an unused railroad spur. The applicant will be required to obtain an easement from the railroad to construct ingress/egress access to the site across this strip.

Surrounding Land Uses

The site is surrounded by industrial uses, Coyote Creek, and The Flea Market. The site is located adjacent to the Coyote Creek Riparian Corridor and is within the 100-year flood zone. San Jose Tallow Properties is located easterly of the subject site at 11750 Berryessa Road.

Land uses to the north of Berryessa Road include American Metal and Iron Recycling at 11665 Berryessa Road, and the Graniterock aggregate processing facility at 11711 Berryessa Road. A recycled materials storage yard is located at the westerly side of Commercial Street and Berryessa Road. A motorcycle repair shop is located to the west on the north side of Berryessa Road. Other uses on the northwesterly side of Berryessa Road in the general site vicinity include the Safety-Kleen hazardous waste materials treatment, storage and transfer facility at 1021 Berryessa Road, an automobile repair shop and a truck parts shop/automobile dismantler. The Berryessa Business Park is located farther to the west at the bend in Berryessa Road, and an animal hospital is located at 940 Berryessa Road near the crossing of US Highway 101. Northwesterly of the site along the easterly side of Commercial Road are located a self service auto and truck dismantler and parts facility (Pick N Pull at 1065 Commercial) and a thrift store. On the west side of Commercial, north of the recycled materials storage are located industrial park uses in the Commercial Street Business Center.

Land uses to the immediate west/southwest of the site include the Norcal corporation yard/green waste transfer facility at 1158 Berryessa Road adjoining the project site, a cabinet-making shop (Yucatan Custom Cabinets), and the Chevron USA Inc. fuel storage facility (1020 Berryessa Road). A recycling area and a small two-story office building are located westerly of the Chevron tank farm.

The site is adjoined on the south side by the rear sides of California Waste Solutions curbside recycling facility and Gonzales Pallet Company that front on Timothy Drive. Other uses southerly of the site include Elcon, Inc., Macro Metallics, and Vision Printing, an auto body shop (Stuckey Auto Body), Moore Material Handling Group, and Rosendin Electric.

Site Permit History

San Jose Self Storage filed an application for a Site Development Permit (H 99-09-069) on September 7, 1999 to allow the public storage facility previously established without benefit of permits. Following receipt of comments from Planning Staff, the project was revised to conform to all applicable City regulations and policies. The Site Development Permit was approved by the Director of Planning on November 30, 1999. Under this existing Site Development Permit, the subject applicant demolished existing structures on the subject site. The applicant then filed this Conditional Use Permit to propose an alternate use to storage.

Project Site Design

The applicant proposes to pave the subject site and use it for a concrete and asphalt crushing and recycling operation as well as onsite circulation and parking. Access to the subject site is proposed via an easement through Union Pacific Railroad property that fronts on to Berryessa Road.

The new facility will include a mobile crusher, radial stacker, truck scale, and other pertinent equipment. In addition, new fences, gates, and landscaping are proposed. Materials will generally be stockpiled in the southerly and westerly area of the site. The applicant proposes stockpiling material up to 20 feet in height. This material will be partially screened from public view by a berm eleven (11) feet in height that the applicant will construct along the southwest and northwest property lines. The berm will also mitigate noise levels to the maximum practical extent.

The proposal does not put project operations within 300 feet of the Coyote Creek riparian corridor. Parking will be permitted up to 100 feet from the riparian corridor. Grading work by a previous property owner, absent the proper permits, had been performed within the Coyote Creek Riparian Corridor. The applicant will be required to revegetate a 50-foot wide landscaped strip along the riparian corridor and remove the existing illegal berm in the riparian corridor.

No new buildings are proposed. One existing mobile building will remain for use by onsite employees.

Facility Operation

The project's operations will occur for a maximum duration of ten (10) hours daily. Proposed operation of the facility is from 7 a.m. to 5 p.m. and operations limited to Monday through Friday. During dust-generating operations on the project site, the applicant shall be required to implement best management practices to control dust generation. To address flooding and storm water runoff concerns, the stockpiles of unprocessed and processed materials will be managed during storm water events (including flooding) according to the Storm Water Pollution Prevention/Management Plan for the project site.

GENERAL PLAN CONFORMANCE

The proposed use is consistent with the San Jose 2020 General Plan Land Use/Transportation Diagram designation of Heavy Industrial in that a concrete/asphalt crushing and recycling facility is by nature a heavy industrial use. A small northeasterly corner portion of the subject parcel, located within the riparian corridor, is designated Public Park and Open Space, and is not part of the scope of this project. The only activities that may occur within this northeasterly corner portion are revegetation of riparian corridor and removal of the illegal berm.

ENVIRONMENTAL REVIEW

An Initial Study was prepared for this project and a Draft Mitigated Negative Declaration was circulated for public review by the Director of Planning on May 14, 2002. The following are the key issues that were addressed.

Air Quality

Impacts to sensitive receptors could result from rock crushing, conveyor, screening, and stockpiling operations as well as fugitive dust resulting from the proposed operations. A final report by Air Permitting Specialists entitled *Evaluation of Air Quality Impacts and Public Health Risks Associated with Concrete Recycling Facility*, dated March 26, 2002 concluded that the

emissions from the above-mentioned activities would have a less than significant impact based upon BAAQMD CEQA thresholds.

The project will use electrically-powered equipment that will use power from a local utility. The operational equipment is permitted under Bay Area Air Quality Management District and California Air Resources Board's permit requirements. Operation of the proposed facility would release particulate matter from the crushing/screening operations. Emissions of carbon monoxide (CO), oxides of nitrogen (Nox), oxides of sulfur (Sox) and particulates related to combustion would be less than significant. Daily emission rate of PM-10 is below the threshold of significance as established by the BAAQMD's CEQA Guidelines. Daily emissions of PM-10 are estimated to be 22.9 pounds per day. This is well below the threshold of significance of 80 pounds per day. As a result, it is concluded that the proposed project would not cause significant long term air quality impacts.

While the project is under construction and during dust generating operations, the developer shall be required to implement effective dust control measures to prevent dust and other airborne matter from leaving the site. With the inclusion of these mitigation measures, the short-term air quality impacts associated with construction will be reduced to less-than-significant levels.

Biological Resources Impacts

Erosion runoff from the project site could enter the live stream resulting in a temporary loss of habitat that could potentially impact steelhead rainbow trout. Surface runoff from on site operations will contain materials that should not enter the drainage system, but that can be captured by measures implemented from a Storm Water Pollution Prevention Plan. A reduction of water quality during project operations could potentially affect steelhead trout both onsite and downstream from the site. Erosion and grading activities could impact newly planted riparian vegetation and existing ordinance size trees. Western pond turtles could move through the project site and red-legged frogs could be washed downstream during flood events and remain at the site.

The project operations shall be set back a minimum of 300 feet from the riparian corridor. Wildlife mitigation measures and ordinance tree mitigation measures shall be per the recommendations of the *Riparian Survey* updated August 29, 2001, and *Tree Survey* dated July 26, 2001 for a Concrete Recycling Facility project located at 11740 Berryessa Road, San Jose prepared by H.T. Harvey and Associates. The recommended mitigation measures in these reports shall be implemented as permit conditions. With the inclusion of these measures the impacts will be reduced to a less than significant level.

To address surface runoff concerns, the operations shall be managed according to the Storm Water Pollution Prevention/Storm Water Management Plan (SWPPP) for the project site. Prior to Public Works clearance, the applicant shall submit copies of the SWPPP, NOI, and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works, and to the Director of Planning.

Hydrology and Water Quality Impacts

The site is located in a flood zone susceptible to flooding during a 100-year flood. An elevation certificate is required prior to the issuance of a building permit. Structures shall be required to elevate the finished floor to base flood elevation or floodproof to one foot above base flood elevation. The property has apparently previously graded in the floodway. An existing berm that appears to be uncompacted and unengineered has apparently been constructed along the floodway, thereby reducing the creek's carrying capacity to convey floodwaters. This situation is in violation of the City's grading and floodplain management ordinances and Code of Federal Regulations. Prior to Public Works clearance, the owner must propose acceptable measures to remedy the conditions created by the unpermitted berm. This may include removing the existing berm and reconstructing it out of the floodway. These solutions must be presented and be acceptable to the City of San Jose and other agencies with jurisdiction over the creek.

As previously mentioned, the applicant shall be required to submit a Storm Water Pollution Prevention Plan in compliance with requirements of the Clean Water Act for non-point discharges, which will include measures to reduce discharges. Implementation of the plan will ensure compliance with water quality standards and waste discharge requirements.

An existing well on the site could present a danger to public health or to the ground water resources if it is not properly maintained or destroyed. The applicant has stated that they intend to maintain the well. In accordance with the requirements of the Santa Clara Valley Water District and applicable local, State, and Federal laws, the applicant shall implement the following measures: (1) file Water Production Statements with the Santa Clara Valley Water District (SCVWD); (2) maintain the well on the subject site so that it does not present a danger to public health or to the groundwater resources in accordance with the SCVWD's maintenance requirements; or (3) properly destroy the well if it is no longer being used. All well destruction activities must be completed under permit from the SCVWD and by appropriately licensed personnel.

Noise and Vibration

The General Plan states that the City's acceptable noise level objectives are 55 DNL as the long-range exterior noise quality level, 60 DNL as the short-range exterior noise quality level, 45 DNL as the interior noise quality level, and 76 DNL as the maximum exterior noise level necessary to avoid significant adverse health effects. To achieve these noise objectives, the City should require appropriate site and building design, building construction, and noise attenuation techniques in new residential development. For industrial uses adjacent to other industrial uses, a DNL value of 70 decibels for community noise is considered compatible. For residential uses a DNL value of 60 decibels for community noise is considered compatible.

The project does not significantly increase long-term average sound levels at the property line of the project, nor at the nearest sensitive receivers. Assuming operating hours from 7 a.m. to 5 p.m., Monday through Friday, the project will result in no change in the long-term average sound level at the nearest residences. The DNL will increase by between 0 and 2 dB at the project boundaries. This is a less than significant increase. Therefore no mitigation is required to reduce these levels.

The project shall implement the recommendations of the Noise Report entitled *Environmental Noise Assessment for SRDC, Inc. Concrete Crushing Facility, San Jose, California*, prepared by Joshua M. Roper and Philip N. Sanders, Charles M. Salter Associates, dated April 15, 2002. The permit will contain a condition limiting the project's hours of operation from 7:00 am to 5:00 p.m. Although maximum noise levels are not significant according to CEQA guidelines, the project will include a berm eleven (11) feet in height along the southwest and northwest property lines to mitigate maximum noise levels to the maximum extent that is practical.

One very specific atypical condition generates ground-borne vibration that is perceptible at the property line of the site. When the Caterpillar 245 makes extreme reaches with its loading bucket, the machine can tilt forward lifting the back end of the machine off the ground. When it hits the ground again, slight shaking is perceptible at the property line. Mitigation consists of instructing equipment operators to be aware of the condition that causes perceptible ground-borne vibration and to avoid this condition. This mitigation measure shall be implemented as a permit condition. Ground-borne vibration is not perceptible at the nearest residential property lines.

ANALYSIS

The main issues associated with the project are: (1) land use compatibility (2) conformance with the City's *Riparian Corridor Policy*, (3) conformance with the *Industrial Design Guidelines*, and (4) conformance with the City's Zoning Ordinance.

Land Use Compatibility

While in terms of CEQA compliance, noise, air quality and water quality impacts of the proposed project may have less than significant impacts if appropriate enforceable mitigation measures are built into the project design, the appropriateness of the proposed project within the existing neighborhood context, and proximity to Coyote Creek are considerations for a Conditional Use Permit application.

The subject site is located in the HI-Heavy Industrial Zoning District. This zoning district conforms to the site's General Plan Land Use/Transportation Diagram of Heavy Industrial. The Zoning Ordinance states that the HI-Heavy Industrial Zoning District is intended for industrial uses with nuisance or hazardous characteristics which for reasons of health, safety, environmental effects, or general welfare are best segregated from other uses. Extractive and primary processing industries are typical of this district. Parcels located adjacent and across the street from the subject site are also located in the HI-Heavy Industrial Zoning District, and the uses on these parcels are currently industrial.

Neighborhood Context

There are no residential uses within 1,000 feet of the subject site. Within a one-mile radius surrounding the subject site is a mix of industrial, commercial, residential, and transportation-related uses. Industrial uses predominate in this wider area. The closest residential neighborhood is located approximately 1,500 feet southeasterly of the site. Additional residential uses are located further away within the greater area.

Given the industrial character of the immediately surrounding properties and the greater distance of the residences, Planning staff believes that the proposed project is a compatible land use. The proposed operation of the recycling facility is limited to Monday through Friday (7 a.m. to 5 p.m.), which will increase its compatibility with the broader neighborhood.

Riparian Corridor Policy

The project site is adjacent to the riparian corridor for Coyote Creek. *The Riparian Corridor Policy Study* states that new development should be set back from the riparian habitat or top of bank a distance sufficient to buffer the corridor from human activities and provide for wildlife dispersal. New development should be designed to protect adjacent riparian corridors from encroachment by lighting, exotic landscaping, noise and toxic substances. The *Policy* also encourages the use of native plants along riparian corridors.

To respond to the *Policy*, the project includes a 100-foot setback from the riparian corridor/top of bank. No lighting or other improvements shall be permitted within the setback, and the first 50 feet of the setback shall be planted with native vegetation based on the approved plant list in the *Riparian Corridor Policy Study*. The remainder of the 100-foot setback area should be revegetated when the site is fully redeveloped. The project also includes a 300-foot setback for crushing and recycling operations. The project includes a fence that shall be seven (7) feet in height between the existing parking area and the 100 foot setback. Further restoration of the riparian corridor should occur with successive development of the property and the 50-foot area of revegetation is considered adequate for the proposed 2 years of operation. With the implementation of these measures the project shall be in substantial conformance with the *Riparian Corridor Policy*.

Industrial Design Guidelines

In conformance with the *Industrial Design Guidelines*, a landscaped berm eleven (11) feet in height visually and acoustically buffers the outdoor activities from adjacent properties and the public right of way. The front 15-foot-wide setback is landscaped with groundcover and trees. To minimize visibility, the stockpiles of crushed concrete and asphalt shall not exceed 20 feet in height and shall be set back at least 25 feet from the front property line. The project includes revegetation of the riparian corridor and a 300-foot setback for crushing/recycling operations. To avoid glare, the project's lighting shall conform to the City of San Jose's *Outdoor Lighting Policy* and *Riparian Corridor Policy*. All areas used for outdoor activity will be paved to control dust and provide appropriate drainage.

Zoning Ordinance Requirements

The Zoning Ordinance requires that maximum noise levels at the property line for industrial uses adjacent to a property used or zoned for industrial or use other than commercial or residential purposes shall not exceed 70 decibels except upon issuance and in compliance with a Conditional Use Permit. This project will result in noise levels that require a Conditional Use Permit. Because of the height of the noise source in some of the proposed operations, it may not be feasible to reduce maximum noise levels to 70 dBA at the property line by means of physical barriers. However, adjacent uses are heavy industrial in nature, generate relatively high noise levels themselves, and are not sensitive receivers. Noise studies completed for this and other

recent projects in the vicinity have found that the area has a high level of noise generated by the existing heavy industrial uses and frequent airplane flights.

To minimize night time noise impacts the permit will contain a condition limiting the project's hours of operation from 7:00 am to 5:00 p.m. In addition, although maximum noise levels are not significant according to CEQA guidelines, the project will include a berm eleven (11) feet in height along the southwest and northwest property lines to further mitigate maximum noise levels to the maximum extent that is practical.

PUBLIC OUTREACH

A notice of the public hearing was distributed to the owners and tenants of all properties located within 500 feet of the subject site, and staff has been available to discuss the proposed project with members of the public.

The applicant distributed an announcement of a community meeting for the project to the owners and tenants of all properties located within 500 feet of the subject site and the Planning Department posted the announcement on the departmental web site. The community meeting was coordinated with Council District 4 staff and held June 8, 2001. Other than Planning staff and the applicant, no one attended the meeting.

Staff has received written correspondence from Dan Reda, who resides approximately 1,500 feet northeasterly of the subject site, Gary Schoennauer, representing the Flea Market, Jennifer Peritz, representing the Santa Clara Valley Audubon Society, and Keith Anderson representing Streams for Tomorrow. The concerns raised are additional noise and pollution, and impacts to the riparian corridor resulting from the project.

Planning staff believes that these concerns have been adequately analyzed in the Initial Study and documented previously in this staff report. As noted, Planning staff has concluded that there is no significant unavoidable impact resulting from the proposed project. Although there is a pending General Plan Amendment to allow a mixed-use (residential and commercial) development on the Flea Market property in anticipation of the BART development, the City will continue to maintain Heavy Industrial land uses west of Coyote Creek. In addition, the permit is for a specific time period, which provides the City the opportunity to revisit proposed operations on the subject site when the permit expires. In conclusion, the design of the project includes measures that allow the Planning Commission to make the findings for granting a Conditional Use Permit on the subject site for the proposed use.

RECOMMENDATION

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Heavy Industrial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.

2. The project site is located in the HI-Heavy Industrial Zoning District.
3. A Mitigated Negative Declaration has been adopted for this project which indicates that certain mitigation measures will be incorporated into the project to prevent the occurrence of any significant adverse effect on the environment.
4. The Permit proposes construction of a concrete/asphalt crushing and recycling facility on the subject site.
5. In the HI-Heavy Industrial Zoning District, a concrete/asphalt crushing and recycling facility requires a Conditional Use Permit.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project will be consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.
4. The project is in conformance with the requirements of the Industrial Design Guidelines.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
 - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
 - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions, each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property, and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below-enumerated precedent conditions shall have been performed or caused to be performed and a Certificate of Permit has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be *signed, notarized, and returned* to the Department of Planning, Building and Code Enforcement within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the acceptance form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.
3. **Industrial Waste.** If industrial waste, as defined by Section 15.12 of the San José Municipal Code, is to be discharged into the sanitary sewer system, a clearance shall be obtained from the Water Pollution Control Plant, Industrial Waste Section.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will cause the total sewage treatment demand to meet or exceed the capacity of San José-Santa Clara Water Pollution Control Plant to treat such sewage adequately and within the discharge standards imposed on the City by the State of California Regional Water Quality Control Board for the San Francisco Bay Region. Substantive

conditions designed to decrease sanitary sewage associated with any land use approval may be imposed by the approval authority.

2. **Conformance with Plans.** Construction and development shall conform to approved development plans entitled, "Concrete Recycling Facility, San Jose, California," dated April, last revised on May 2, 2002, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 17, Chapter 17.04).
3. **Previous Permits.** This Permit replaces Permit File No. H 99-09-069.
4. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
5. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 5:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
6. **Landscaping.** Planting and irrigation are to be provided, as indicated, on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines.
7. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement and Building prior to approval of the final inspection of the project.
8. **Landscaped Berm in Front Setback.** The applicant shall construct a berm at least eleven (11) feet in height and less than twelve (12) feet in height along the southwest and northwest property lines.
9. **Biological Resources and Riparian Corridor Mitigation.** The project operations shall be set back a minimum of 300 feet from the riparian corridor. No activity shall be permitted within 100 feet of the riparian corridor. The applicant shall revegetate a 50-foot wide landscaped strip along the riparian corridor and remove the existing illegal berm in the riparian corridor to the satisfaction of the Director of Planning. Wildlife mitigation measures and ordinance tree mitigation measures shall be per the recommendations of the Riparian Survey updated August 29, 2001, and Tree Survey dated July 26, 2001 for a Concrete Recycling Facility project located at 11740 Berryessa Road, San Jose prepared by H.T. Harvey and Associates.

10. **Wells and Water Quality.** In accordance with the requirements of the Santa Clara Valley Water District and applicable local, State, and Federal laws, the applicant shall implement the following measures.
 - a. File Water Production Statements with the Santa Clara Valley Water District (SCVWD) in accordance with the SCVWD's filing requirements.
 - b. Maintain the well on the subject site so that it does not present a danger to public health or to the groundwater resources in accordance with the SCVWD's maintenance requirements.
 - c. Properly destroy the well if it is no longer being used. All well destruction activities must be completed under permit from the SCVWD and by appropriately licensed personnel.
11. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Electroliers shall not exceed 20 feet above grade. No lighting or other improvements shall be permitted within the 100 foot setback from the riparian corridor.
12. **Refuse.** All trash areas shall be effectively screened from view, covered and maintained in an orderly state. No outdoor storage is allowed unless designated on approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
13. **Roof Equipment.** All roof equipment shall be screened from view.
14. **Utilities.** All on-site telephone, electrical and other overhead service facilities shall be placed underground.
15. **Outside Storage.** No outside storage is permitted except in areas designated on the approved plan set.
16. **Stockpiled Materials.** Stockpiled materials shall be set back at least 25 feet from the front property line and shall not exceed 20 feet in height.
17. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the Director of Planning.
18. **Colors and Materials.** All building colors and materials are to be specified on the approved plan set.
19. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the natural grade slope, shall be removed without a Tree Removal Permit issued by the Director of Planning.

20. **Tree Mitigation.** Each tree to be removed shall be mitigated at the following ratios:
- a. Each tree removed less than 12 inches in diameter shall be replaced by one 15-gallon tree.
 - b. Each tree removed from 12 inches to 18 inches in diameter shall be replaced by two 24-inch-box trees.
 - c. Trees 18 inches in diameter or larger shall not be removed unless a Tree Removal Permit has been approved for the removal of such trees. Each tree removed 18 inches in diameter or larger shall be replaced by four 24-inch-box trees.
21. **Tree Protection Standards.** The applicant shall maintain the trees and other vegetation to be retained in this project. Maintenance shall include pruning and watering as necessary and protection from construction damage. All trees to be preserved shall be permanently identified by metal numbered tags prior to the removal of any tree on the site. All trees to be saved shall be protected by fencing of chain link, hog wire, or other fencing approved by the Director of Planning prior to issuance of the Grading Permit or removal of any tree. The fence shall occur at the dripline in all cases and shall remain during construction. Tree masses to be saved may be protected with a fence surrounding the dripline of the entire mass. All sensitive plant and wildlife habitat areas to be preserved and protected shall be posted prior to issuance of Grading Permit with signs stating that no disturbance, including grading, storage of equipment, vehicles or material, or other disruptions, is allowed. Fencing may be required for areas subject to direct impact, such as trees to be saved or habitat within areas being developed. Fencing and signage shall be maintained by the applicant to prevent disturbances during the length of the construction that might disrupt the habitat or trees.
22. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-04467) to the satisfaction of the Director of Public Works:
- a. *Storm Drainage, Sewer Fees.* In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
 - b. *Flood: Zone A8*
 - 1) Elevation certificate is required prior to the issuance of a building permit.
 - 2) Elevate the finished floor to base flood elevation or floodproof to one foot above base flood elevation.
 - c. *Grading Permit.* A grading permit is required prior to the issuance of a Public Works Clearance.
 - d. *Storm Water Management Plan.* Because this project involves a land disturbance of more than five acres, the applicant is required to implement post construction

Storm Water Pollution Prevention measures. Prior to the commencement of any clearing, grading or excavation, the project shall comply with the State Water Resources Control Board's National Pollutant Discharge Elimination System (NPDES) General Construction Activities Permit as follows:

- 1) The applicant shall develop, implement and maintain a Storm Water Pollution Prevention Plan (SWPPP) to control the discharge of storm water pollutants including sediments associated with construction activities.
- 2) The applicant shall file a Notice of Intent (NOI) with the State Water Resources Control Board (SWRCB).

Along with these documents, the applicant may also be required to prepare an Erosion Control Plan. The Erosion Control Plan may include Best Management Practices (BMPs) as specified in ABAG's *Manual for Standards Erosion & Sediment Control Measures* for reducing impacts on the City's storm drainage system from construction activities.

Prior to the issuance of a grading permit, the applicant shall submit copies of the SWPPP, NOI and Erosion Control Plan (if required) to the City Project Engineer, Department of Public Works, Room 308, 801 North First Street, San José, California 95110-1795 and the Director of Planning, Room 400, 801 North First Street, San José, California 95110-1795. To obtain an NOI application and further information about the Erosion Control Plan and the NPDES permit requirements, please call the Department of Public Works at (408) 277-5161 or the SWRCB at (916) 657-1146.

- e. *Floodway.* The property was apparently graded in the floodway. A berm that appears to be uncompacted and unengineered has apparently been constructed along the floodway, thereby reducing the creek's carrying capacity to convey floodwaters. This is in violation of the City's grading and flood plain management ordinances and Code of Federal Regulations. The owner must propose acceptable measures to remedy this condition. This may include removing the existing berm and reconstructing it out of the floodway. These solutions must be presented and be acceptable to the City of San Jose and other agencies with jurisdiction over the creek.
- f. *Street Improvements.* Public Works defers frontage improvements along Berryessa Road for the two-year temporary recycling use of the facility. For any extension beyond the two-year permit, the frontage improvements shall be required.
- g. *Easements.* Applicant shall obtain all necessary easements from Union Pacific Railroad (UPRR) and San Jose Tallow Properties.
- h. *Landscape Irrigation Equipment.* Pursuant to San José Municipal Code, Section 15.10.478, landscape irrigation equipment shall be installed to the satisfaction of the Director of Public Works.

- i. *Reclaimed Water Irrigation Systems.* Pursuant to San José Municipal Code, Section 15.10.480, irrigation systems for all landscaped areas in excess of 10,000 square feet, unless specifically exempted by the Director of Planning, shall be designed and installed to allow the current and future use of reclaimed water to the satisfaction of the Director of Public Works.
- j. *Inlet Filters.* The project developer shall install inlet filters in all on-site storm drainage inlets. These filters shall be installed, maintained and replaced by a qualified consultant hired by the property owner. Copies of all inspection and maintenance records shall be provided to the City upon request. The project developer shall implement a maintenance program for these inlet filters that includes but is not limited to the following measures:
 - 1) Installation. The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintained by the project developer and subsequent property owner.
 - 2) Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.
 - 3) Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt and other loose debris.
 - 4) Regular Inspections. The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced by a qualified individual as necessary to ensure the filters are functioning properly.
 - 5) Replacement of Absorbent Material. The absorbent material shall be replaced by a qualified individual in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.
 - 6) Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state and federal regulations.
 - 7) Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.
- k. *Storm Water Stenciling.* All drain inlets shall be labeled "No Dumping--Flows to Bay." Please contact the City of San José, Department of Public Works, at (408) 277-5161 to obtain free stencils.

23. **Archaeology.** Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance. The project approved by this permit shall include implementation of the mitigation measures identified in the report entitled "Cultural Resources Assessment Update – San Jose Self Storage Facility, City of San Jose, Santa Clara County, APN 254-13-090," dated December 10, 1997, prepared by Basin Research Associates. If any unanticipated prehistoric or significant historic era cultural materials are exposed during construction grading and/or excavation, operations should stop within 10 feet of the find and a qualified professional archaeologist contacted for evaluation and further recommendations. Potential recommendations could include evaluation, collection, recordation, analysis, etc. of any significant cultural materials followed by a professional report.
24. **Building Clearance for Issuing Permits.** Prior to the issuance of a Building Permit, the following requirements must be met to the satisfaction of the Chief Building Official:
- a. *Construction Plans.* This permit file number, CP 01-01-008, shall be printed on all construction plans submitted to the Building Division.
 - b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
 - c. *Americans With Disabilities Act and Title 24.* The applicant shall provide appropriate access as required by the Americans With Disabilities Act (ADA) and Title 24.
 - d. *Mechanical Equipment.* No roof-mounted or other exterior mechanical equipment shall be located within 120 feet of a residential property line unless a Sound Engineer has certified that noise level from such equipment will not exceed 55 DNL at the residential property line.
25. **Fire Hydrants.** Public (off-site) and private (on-site) fire hydrants shall be provided as approved and at the exact location specified by Protection Engineering Section of the Fire Department to the satisfaction of the Fire Chief.
26. **Fire Hydrants and Driveways.** All fire hydrants shall be at least 10 feet from all driveways to the satisfaction of the Fire Chief.

27. **Fire Flow.** Required fire flow for the site is 4,250 gpm, or as otherwise approved in writing by the Fire Chief.
28. **Fire Extinguisher System.** Building(s) shall be provided with an automatic fire extinguisher system. Systems serving more than 100 heads shall be supervised by a remote alarm system to the satisfaction of the Fire Chief.
29. **Lock Boxes.** The project development shall provide lock boxes to the satisfaction of the Chief Building Official and Fire Chief.
30. **Gates.** All electrical gates shall have a manual means of opening subject to the approval of the Fire Department.
31. **Fences.** No chainlink fencing is permitted within the front setback and no barbed wire is permitted anywhere on the subject site. Fencing adjacent to the 100 foot setback from the riparian corridor shall be at least seven (7) feet and at most eight (8) feet in height.
32. **Hazardous Materials.** Any hazardous materials regulated by Chapter 17.68 of the San José Municipal Code on the site must be used and stored within approved buildings and/or within areas specified on the approved plan set, if any, in full compliance with the City's Hazardous Material Ordinance and the Hazardous Materials Management Plan for the site approved by the San José Fire Prevention Bureau.
33. **Anti-Graffiti.** The applicant shall remove all graffiti from buildings and wall surfaces within 48 hours of defacement.
34. **Recycling.** Scrap construction and demolition material should be recycled. Integrated Waste Management staff at 277-5533 can provide assistance on how to recycle construction and demolition debris from the project, including information on available haulers and processors.
35. **Hours of Operation.** Construction and operations shall be limited to the hours of 7:00 a.m. and 5:00 p.m. Monday through Friday for any on-site or off-site activities.
 - a. *Deliveries.* Deliveries shall not occur outside the above construction hours. All deliveries shall be coordinated to ensure that no delivery vehicles arrive prior to the opening of the gates to prevent the disruption of nearby residents.
 - b. *Plans.* The operating and construction hours shall be printed on all plans for the project used to construct the project.
36. **Disturbance Coordinator.** A disturbance coordinator shall be identified by the developer for this project. The disturbance coordinator shall be responsible for ensuring compliance with the hours of construction, site housekeeping, and other nuisance conditions in this permit.

- a. *Daily Log.* The disturbance coordinator shall maintain a log of daily activities on the project, including but not limited to, verification of site closure activities, project cleanliness, complaints on site activities and conditions and dates and times of the coordinators visits to the project if the coordinator is not solely responsible for this project site.
 - b. *Telephone Contact.* A phone with answering machine for non-work hours shall be maintained during the duration of project construction. The phone number should be a local call for surrounding residents.
 - c. *Signage.* The name and phone number of the disturbance coordinator, the hours of construction limitations, City File Number CP 01-01-008, city contact and phone number (department and phone number), and shall be displayed on a weatherproof sign posted at each entrance to the project site.
37. **Concrete Crusher.** The concrete crusher shall be located a minimum of 25 feet from the nearest property line. The area around the crusher shall be swept daily.
38. **Noise Mitigation.** The project approved by this permit shall include implementation of the noise mitigation measures identified in the noise report entitled "Environmental Noise Assessment for SRDC, Inc. Concrete Crushing Facility, San Jose, California," prepared by Joshua M. Roper and Philip N. Sanders, Charles M. Salter Associates, dated April 15, 2002. One very specific atypical condition generates ground-borne vibration that is perceptible at the property line of the site. When the Caterpillar 245 makes extreme reaches with its loading bucket, the machine can tilt forward lifting the back end of the machine off the ground. When it hits the ground again, slight shaking is perceptible at the property line. The applicant shall instruct equipment operators to be aware of the condition that causes perceptible ground-borne vibration and to avoid this condition.
39. **Air Quality, Street Cleaning and Dust Control.** The project approved by this permit shall include implementation of the air quality mitigation measures identified in the air quality report entitled "Final Report Evaluation of Air Quality Impacts and Public Health Risks Associated with Concrete Recycling Facility dated March 26, 2002, and Evaluation of Air Quality Impacts and Public Health Risks Associated with Concrete Recycling Facility, dated August 6, 2001 and amended August 26, 2001," prepared by Air Permitting Specialists. While the project is under construction and during all dust-generating operations, the applicant shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site. On-site areas visible to the public from the public right-of-way shall be cleaned of debris, rubbish, and trash at least once a week. The following practices shall be implemented during all phases of construction and operations on the project site to the satisfaction of the Director of Planning and the City Project Engineer of the Department of Public Works. Specifically, the applicant shall:
- a. Use dust-proof chutes for loading construction debris onto trucks.
 - b. Water to control dust generation during demolition and break-up of pavement.

- c. Internal haul roads shall be paved, sealed, or stabilized to control dust from truck traffic.
 - d. The project applicant shall obtain all necessary local and State Permits for the crusher.
 - e. All active construction areas shall be watered twice daily, or more often if necessary, to prevent visible dust clouds. Increased watering frequency shall be required whenever wind speeds exceed 15 miles per hour.
 - f. Pave, apply water three times daily or more often as deemed necessary by the Directors of Planning and Public Works, or apply non-toxic soil stabilizers on all unpaved access roads, parking, and staging areas at construction sites, to prevent visible dust clouds.
 - g. Damp sweep daily or more often if determined necessary by either the Director of Planning or Public Works, all paved construction areas, access roads, parking areas, and staging areas to keep them free from visible dust, dirt, or debris.
 - h. Enclose or cover stockpiles of debris, soil, sand, concrete, asphalt and any other materials that can be windblown. All trucks transporting these materials shall be covered.
 - i. Sweep streets daily (preferably with water sweepers) if visible soil material is carried onto adjacent public streets.
 - j. Subsequent to clearing, grading, or excavating, exposed portions of the site shall be watered, landscaped, treated with non-toxic soil stabilizers, or covered as soon as possible. Hydroseed or apply non-toxic soil stabilizers to inactive construction areas and previously graded areas inactive of ten days or more.
 - k. Construction traffic speeds shall not exceed 15 miles per hour on unpaved roads.
 - l. Replant vegetation in disturbed areas as soon as possible after the completion of grading and construction.
 - m. Install erosion control measures to prevent silt runoff to public roadways.
 - n. These construction and operational impact mitigation measures shall be included in all contract documents for the project to ensure full disclosure to contractors and subcontractors.
40. **Other Permits and Compliance with Other Agencies Requirements.** The applicant shall obtain all necessary permits from and comply with all applicable requirements of the Bay Area Air Quality Management District, the Local Enforcement Agency of the

California Integrated Waste Management Board and the San Francisco Bay Regional Water Quality Control Board, and all other applicable local, State, and Federal agencies.

41. **Noncompliance and Order to Show Cause.** The Director of Planning may order an immediate halt to the operations, or a reduction in the hours of operations, if the Regional Water Quality Control Board or the Bay Area Air Quality Management District receives a notice of violation or the Director determines that the facility is not in substantial conformance with the requirements of the Conditional Use Permit or Zoning Ordinance. Within seven (7) days of ordering such a reduction, the Director of Planning shall issue a Notice of Noncompliance in conformance with Title 20 of the Municipal Code indicating the specific area(s) of noncompliance and providing notice that the Director may issue an Order to Show Cause why the Conditional Use Permit shall not be revoked, suspended, or modified if the noncompliance is not corrected within the specified time. The reduction in the allowed hours of operation may not extend beyond the time frame specified in the Notice of Noncompliance for correction unless the Director issues an Order to Show Cause. If the Director issues an Order to Show Cause, the reduction can continue until the Planning Commission holds a public hearing on the Order to Show Cause and makes a decision as to whether or not the permit should be modified, suspended or revoked.

CONDITIONS SUBSEQUENT

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire in two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Title 20 of the San José Municipal Code it finds:
 - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
 - c. The use as presently conducted creates a nuisance.
3. **Time Limit.** This Conditional Use Permit expires and has no further force or effect two (2) years from the date of this permit. Please note that this conditional use permit has been granted for a period of two (2) year(s) only. You are being specifically and separately advised of this time limitation so that you will consider this time limitation in your

decision to accept this permit or as you make any investment decision related to this property.

4. **Compliance Review:** A Compliance Review is required one year from the date of approval of this Permit.

c: Building (2); Public Works;
Tom Bylund, SRDC, Inc., 1265 Montecito Ave., Suite #200, Mountain View, CA 94043-4506
Attachments: Departmental and Agency Memos, Public Notice, Hearing Notice, Mitigated
Negative Declaration, Initial Study, Public Correspondence
CP01-01-008:JN:jb/